

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1956.

575

No. 2, SPECIAL CALENDAR.

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THE UNITED STATES OF AMERICA *EX RELATIONE*  
LUCY ANN TURNER, DIXEY GRISWELL, AND MAUDE  
TURNER, WILLIE TURNER, ANNA TURNER, AND  
FLORENCE TURNER, MINORS, SUING BY THEIR  
MOTHER AND NEXT FRIEND, LUCY ANN TURNER,  
APPELLANTS,

vs.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE  
INTERIOR.

---

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED JULY 22, 1908.



# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1909.

No. 1926.

No. 2, SPECIAL CALENDAR.

THE UNITED STATES OF AMERICA *EX RELATIONE*  
LUCY ANN TURNER, DIXEY GRISWELL, AND MAUDE  
TURNER, WILLIE TURNER, ANNA TURNER, AND  
FLORENCE TURNER, MINORS, SUING BY THEIR  
MOTHER AND NEXT FRIEND, LUCY ANN TURNER,  
APPELLANTS,

vs.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE  
INTERIOR.

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# In the Court of Appeals of the District of Columbia.

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No. 1926.

THE UNITED STATES OF AMERICA *ex Relatione* LUCY ANN TURNER  
ET AL., Appellants,

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior.

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1 Supreme Court of the District of Columbia.

At Law. No. 49891.

THE UNITED STATES OF AMERICA *ex Relatione* LUCY ANN TURNER,  
DIXEY GRISWELL, and MAUDE TURNER, WILLIE TURNER, ANNA  
TURNER, and FLORENCE TURNER, Minors, Suing by Their Mother  
and Next Friend, LUCY ANN TURNER, Petitioners,

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered that in the Supreme Court of the District of  
Columbia, at the city of Washington, in said District, at the times  
hereinafter mentioned, the following papers were filed and proceed-  
ings had in the above-entitled cause, to wit:

*Petition for Writ of Mandamus.*

Filed October 29, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49891.

THE UNITED STATES OF AMERICA *ex Relatione* LUCY ANN TURNER,  
DIXEY GRISWELL, and MAUDE TURNER, WILLIE TURNER, ANNA  
TURNER, and FLORENCE TURNER, Minors, Suing by Their Mother  
and Next Friend, LUCY ANN TURNER, Petitioners,

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

Mandamus.

Your petitioners respectfully represent:

1. That they are citizens of the United States and freedmen citi-

zens, members and residents of the Creek Nation in the Indian Territory and Creek freedmen by blood.

2. That the Respondent, James Rudolph Garfield, is a citizen of the United States, temporarily residing in the District of Columbia, and is an officer of the Government of the United States and Secretary of the Interior in said Government, and is sued as such, having succeeded on March 5, 1907, as said Secretary of the Interior the Ethan A. Hitchcock hereinafter mentioned.

3. That as heretofore stated, respondent's immediate predecessor in office as Secretary of the Interior was Ethan A. Hitchcock, to whom as said Secretary of the Interior was committed by Congress under certain laws hereinafter referred to, the duty of final action on applications for citizenship in the Five Civilized Tribes in the Indian Territory, or of freedmen citizenship in certain of said tribes, including the Creek Tribe, and of approving the enrollment of those applicants whom he should deem entitled to be placed on the final rolls of members or citizens of any one of the Five Civilized Tribes, the Creek Tribe of Nation being one of the said Five Civilized Tribes.

4. That by certain treaties and agreement between the United States and the Creek Nation of Indians, the Creek Nation ceded to the United States the lands granted to it by treaties with the United States east of their present home in exchange for the lands whereon said Nation now resides. That by the treaty between the United States and the Creek Nation of Feb. 14, 1833, proclaimed April 12, 1834 (7 Stats. 417) the lands occupied by the Creek Nation, and in which lands your petitioners as freedmen citizens had an equal undivided interest, were given or granted to the said Creek Nation by the United States in fee simple. That Article 3 of the said Creek treaty aforesaid provides as follows:

"Article 3. The United States will grant a patent in fee simple to the Creek Nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States—and the right thus guaranteed by the United States shall be continued to said tribe of Indians so long as they shall exist as a nation, and continue to occupy the country hereby assigned them."

That the lands referred to are the same lands whereon the Creek Nation now resides, and in which petitioners claim an undivided interest.

That by the treaty of June 14, 1866, proclaimed August 11, 1866, your petitioners and other Creek freedmen were given an undivided interest in the lands of the Creek Nation, Article 2 of said treaty providing as follows:

"The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus



3     residing in said country, may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe."

5. That said Indians and their heirs and the Creek freedmen residing among them and entitled to share in the tribal lands and funds under the treaty of 1866 referred to in the 4th paragraph hereof have not become extinct and have not abandoned the said land or any part thereof, but, on the contrary, the reversionary interest of the United States in said lands has been terminated and surrendered to said Indians and Creek freedmen by certain Acts of Congress, treaties and agreements having for their purpose the division in severalty of the lands of the Creek Nation among the Creek Indians and freedmen members and citizens of said Creek Tribe and their descendants. That your petitioners are lawful descendants of a freedwoman, long recognized as a citizen or freedman member of said Creek Tribe, and your petitioners aver that they have heretofore been recognized and adjudged by the Secretary of the Interior to be freedmen members of said Creek Nation, and as such your petitioners have a vested right to have a lawful allotment of land in the Creek Nation allotted to them and to receive an equal undivided distributive share in the funds of the Creek Nation.

Your petitioners attach hereto, and pray that the same may be read as a part hereof under the designation "Exhibit A-1," a true copy of the order and decision unappealed from of the Commission to the Five Civilized Tribes holding your petitioners entitled to a vested interest in the lands and funds of the Creek Nation.

6. That under the provisions of various acts of Congress, a Commission to the Five Civilized Tribes was created for the purpose among other things of making agreement with each of the Five Civilized Tribes for the division in severalty among their citizens or members of the lands held by them in common, of enrolling under the direction and approval of the Secretary of the Interior the members or citizens of every one of the Five Civilized Tribes, and of allotting in severalty in fee simple to the members of the Creek Nation the lands held by said Nation as hereinbefore set forth. That under the provisions of said acts of Congress of agreements effected in accordance therewith and of treaties between the United States and said Indian tribes, rolls of members of each of the tribes were directed to be prepared by said Commission under the supervision of the Secretary of the Interior from time to time, and it was provided that when the enrollment of any person as a member of any one of the Five Civilized Tribes should be approved by the Secretary of the Interior, his name should be placed on the final roll of said tribe, and he thereby should become and be a member of the said tribe of Na-

tion and entitled to an allotment in the Creek Nation of 160  
4 acres of average allotable land in said Nation, and to the other  
rights and privileges common to citizens of said Nation.

That by the Act of June 10, 1893 (29 Stats. 321-29) it was provided:

“That the rolls of citizenship of the several Tribes as now existing are hereby confirmed.”

And that either the Commission to the Five Civilized Tribes or the legally constituted court or committee on citizenship of the several tribes should determine after hearing the applications of persons claiming right to be admitted and enrolled in the several Nations, and either the Tribe or any person aggrieved by any decision of the tribal authorities or the Commission to the Five Civilized Tribes to have the right of appeal within a limited time from such decision to the United States District court, whose decision should be final, and the rolls thus prepared, it was provided,

“shall be and are hereby made rolls of citizenship of said Nation or Tribe.”

and should be filed with the Commissioner of Indian Affairs

“To remain there for use as the final judgment of the duly constituted authorities.”

That by the Act of June 7, 1897 (30 Stats. 62-84) it was provided that the words “rolls of citizenship” as used in the Act of June 10, 1896,—

“shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the Nation and the descendants of those appearing on such rolls, and such additional names and their descendants as have been subsequently added thereto by the council of such nation, the duly constituted courts thereof, or the Commission under the Act of June 10, 1896.”

It was provided that all other names appearing upon such rolls, and not confirmed by the Act of June 10, 1896, as herein construed, might within six months from the passage of the Act be stricken from the rolls—

“where the party affected shall have 10 days’ previous notice that said Commission will investigate and determine the right of such party to remain upon such roll as a citizen of such Nation.

“Provided, however, that the person so stricken from the rolls should have a right of appeal to the United States District Court.”

That by the Act of June 23, 1898 (30 Stat., 495-503) it was provided:

“Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made.

\* \* \* \* \*

5 “The roll of Creek freedmen made by J. W. Dunn under  
authority of the United States, prior to March 14, 1907, is  
hereby confirmed, and said Commission is directed to enroll

all persons now living whose names are found on said rolls, and all descendants born since the date of said roll to persons whose names are found thereon, with such other persons of African descent as may have been rightfully admitted by the lawful authorities of the Creek Nation.

\* \* \* \* \*

“The rolls so made when approved by the Secretary of the Interior shall be final and the persons whose names are found thereon with their descendants thereafter born to them, with such persons as may intermarry according to the tribal laws shall alone constitute the several Tribes which they represent.”

That by the Act of May 31, 1900 (31 Stats., 221-236) it was provided that the Commission

“shall not receive, consider, or make any record of any application of any person for enrollment as a member of any tribe of the Indian Territory who has not been recognized as a citizen thereof and duly and lawfully enrolled or admitted as such, and its refusal of such application shall be final when approved by the Secretary of the Interior.”

That by the Act of March 3, 1901 (31 Stats. 1058-1077) it was provided:

“The rolls made by the Commission to the Five Civilized Tribes when approved by the Secretary of the Interior shall be final, and the persons whose names are found thereon shall alone constitute the several tribes which they represent; and the Secretary of the Interior is authorized and directed to fix a time by agreement with said Tribes or either of them for closing said rolls, but upon failure to agree thereto, then the Secretary of the Interior shall fix a time for closing said rolls, after which no name shall be added thereto.”

That by the Act of March 8, 1901 (31 Stats. 861) it was provided:

“3. All lands of said Tribe shall be allotted among the citizens of the Tribe by said Commission so as to give each an equal share of the whole in value as nearly as may be, in manner following:

There shall be allotted to each citizen 160 acres of land—boundaries to conform to the Government survey—which may be selected by him so as to include improvements which belong to him.”

That by said Act it was further provided:

“The rolls so made by said Commission, when approved by the Secretary of the Interior, shall be the final rolls of citizenship of said tribe, upon which the allotment of all lands and the distribution of all moneys and other property of the tribes shall be made and to no other persons.”

All persons who were living on April 1, 1899, entitled to be enrolled under the Act of June 28, 1898, it was provided, should be enrolled, and if any such citizen had died since that time or should hereafter die before receiving his allotment, it was provided that his heirs should receive the same.

6 That by the supplemental Creek Agreement of June 30, 1902 (32 Stats. 500) it was provided in Section 16:

“Selections of homesteads for minors, prisoners, convicts, incom-

petent and aged and infirm persons who cannot select for themselves may be made in the manner provided for the selection of their allotments, and if, for any reason, such selection be not made for any citizen, it shall be the duty of said Commission to make selection for him."

That by the Act of April 21, 1904 (33 Stats. 189-204) it was provided that the Commission to the Five Civilized Tribes should conclude its work on or before July 1, 1905, and cease thereafter to exist.

That by the Act of March 3, 1905 (33 Stats. 1048-50) it was provided that the Secretary of the Interior should complete the unfinished business of the Commission to the Five Civilized Tribes, and there was conferred on him all the powers heretofore granted to the said Commission.

That by the Act of April 26, 1906 (34 Stats. 137), it was provided that no person should be enrolled unless application for enrollment was made prior to December 1, 1905, and the rolls of citizenship were required to be completed by March 4, 1907.

7. That under and in accordance with the provisions of these several acts the Commission to the Five Civilized Tribes and the Secretary of the Interior undertook the investigation of the rights of parties applying for enrollment, and prepared rolls on which were placed persons held entitled to be enrolled, and said rolls were by the Secretary of the Interior finally approved, the names of your petitioners being, as hereinafter set forth, placed on said final approved rolls. That rules and regulations were provided for the proper determination of the rights of parties to enrollment, and these rules and the practice of the Commission provided, as your complainants are informed and allege, that notice should be given to all parties of all steps affecting their rights, and all proceedings looking to the enrollment of applicants were conducted in accordance with the principles of the common law, so far as applicable and not inconsistent with the provisions of the statutes hereinbefore set forth. That your petitioners made application for enrollment and their cause came on for hearing before the Commission to the Five Civilized Tribes and testimony in the cause was taken in the month of July, 1904. That your petitioners employed as their attorneys J. G. Lieber and E. L. Merrick, attorneys practicing before the said Dawes Commission, and each of whom, as your petitioners are informed and believe, are intermarried citizens of the Creek Nation, and as such entitled to rights in the said Nation. That your petitioners throughout the proceedings leading up to their final enrollment were represented, so far as they have any information, by the said Lieber and the said Merrick. That when the testimony of your petitioners was taken, E. L. Merrick had his appearance entered as attorney for applicants, and M. L. Mott appeared as attorney for the Creek Nation.

7 That after all the testimony which either side desired to offer had been adduced, the Commission to the Five Civilized Tribes rendered a decision holding your petitioners entitled to enrollment in the Creek Nation as Creek freedmen. (A true copy of said decision is attached hereto marked "Exhibit A-1" and is

prayed to be read as a part hereof.) That after said decision was rendered by the Commission to the Five Civilized Tribes, the attorney for the Creek Nation was duly and regularly advised of said decision. (A true copy of the notification to the attorney for the Creek Nation of the decision of the Commission to the Five Civilized Tribes is attached hereto marked "Exhibit A-2" and is prayed to be read as a part hereof.)

That subsequently to the decision herein referred to, and the notification referred to, the names of your petitioners were forwarded by the Commission to the Five Civilized Tribes in regular and due course to the Secretary of the Interior for enrollment on the final approved rolls of freedmen citizens or members of the Creek Tribe or Nation.

That no appeal was taken from the aforesaid decision of the Commission to the Five Civilized Tribes by the Creek Nation, and no objection introduced to the claim on behalf of your petitioners that they were and of right should be declared to be freedmen citizens or members of said Creek Nation. That the enrollment of your petitioners was then duly, regularly and lawfully approved by the then lawful incumbent of the office of Assistant Secretary of the Interior, said Assistant Secretary of the Interior being duly and regularly authorized by the Secretary of the Interior to sign said roll in his, the said Secretary of the Interior's name and stead, and the names of your petitioners were duly entered on the regularly authenticated and approved final rolls of freedmen citizens of the Creek Nation as follows:

*Creek Roll, Creek Freedmen.*

No.	Name.	Age.	Sex.	Blood.	Census card No.
*	* * *	*	*	*	
5650	Turner, Lucy Ann.....	37	F	....	1882
5651	Turner, Maude.....	12	F	....	1882
5652	Turner, Anna.....	18	F	....	1882
5653	Turner, Willie.....	16	M	....	1882
5654	Turner, Florence.....	9	F	....	1882
5655	Griswell, Dixey.....	19	F	....	1882
*	* * *	*	*	*	

(\*The marks indicate other names were on said roll.)

That said final roll was on, to wit, the 16th day of June, 1906, duly and regularly approved by the then lawful incumbent of the office of Assistant Secretary of the Interior, as is evidenced  
8 by the following genuine and regular notation at the bottom of said approved final roll:

Department of the Interior,  
Washington, D. C., June 16, 1906.

Approved:

JESSE E. WILSON,  
*Assistant Secretary.*

L. R. S.

8. That sometime subsequent to the final enrollment as hereinbefore set forth by your petitioners, the attorneys for your said petitioners became the one assistant attorney for the Creek Nation, and charged as such with the special duty of keeping freedmen off the Creek Rolls, and the other of said attorneys became a law clerk or attorney for the Commission to the Five Civilized Tribes in the Creek Enrollment Division. That thereafter the said attorneys in violation of the duty incumbent upon them as attorneys for your petitioners, and contrary to the true facts, one or the other of them falsely stated to the attorney for the Creek Nation that your petitioners were not entitled to enrollment, and that their enrollment had been procured by fraud. That under the rules of the common law, as your petitioners are informed and advised, the attorneys for your petitioners, as aforesaid, neither could be heard in nor permitted to allege matters which had been stated to them by any or all of your petitioners as their clients, without the consent and permission of your petitioners, and that even if true, they could not be heard or permitted to assert that your petitioners, their former clients, had stated to them they would or could prove their case or were proving their case by or through fraudulent means. Your petitioners further allege that having been duly placed upon the approved final rolls by the Secretary of the Interior, that all jurisdiction in the said Secretary of the Interior over the matter of the enrollment of your petitioners ceased and determined, and that thereafter the said Secretary of the Interior was without any authority or jurisdiction to remove the names of your petitioners from the said final rolls of the Creek Nation.

That notwithstanding these rules of the common law, and without any notice to your petitioners, and these rules and principles of law and the lack of jurisdiction in the Secretary of the Interior after the final enrollment of your petitioners, the attorney for the Creek Nation, M. L. Mott, was permitted to, and did, move to reopen the matter of the final enrollment of your petitioners. Your petitioners further state that the said motion to reopen the case was not in accordance with the rules and regulations and practice of the Commission to the Five Civilized Tribes and the Secretary of the Interior, in that the said motion did not set forth the facts or any newly discovered evidence. (A copy of the said motion to reopen is attached hereto, marked "Exhibit A-3," and is prayed to be read as a part hereof.)

9 That sometime thereafter, and without any notice to your petitioners an affidavit was filed, signed by Edward Merrick one of the former attorneys of your petitioners, and at that time an attorney or law clerk in the Creek Enrollment Division of the Dawes Commission, alleging that your petitioners' enrollment had been procured by means of false testimony, and further alleging that your petitioners had abandoned their case as the attorney was informed and had left the Indian Territory for Texas. Your petitioners allege that this affidavit is wholly untrue and false. That your petitioners never as a matter of fact did inform the said Merrick or the said Lieber or any other person whosoever that they had or could procure false testimony in their behalf. Your petitioners



allege that they did not procure any false testimony in their behalf. They further allege that they never did abandon their case or claim to citizenship, and they further allege that the affidavit is wholly untrue and false, wherein it alleged that petitioners had removed to the State of Texas, the fact being that ever since the year 1901 your petitioners had lived at Wagoner, I. T., about 14 miles from Muskogee, where the said Merrick lived, and where was the chief office of the Commission to the Five Civilized Tribes, which place was known to the said Merrick and to the said Commission to the Five Civilized Tribes to be the residence of your petitioners.

That your petitioners received no notice whatsoever of the motion to reopen their case, nor of the affidavit filed by the said Merrick, and had no opportunity to reply thereto prior to the time when they learned that the case of your petitioners had been reopened.

That your petitioners not hearing from their application for enrollment, and the fact of their final enrollment not being communicated to them, they employed W. D. Halfhill as their attorney to ascertain the situation and status of their case, and finally learned that they had been enrolled, but did not receive notification of the same until too late for them to select allotments as provided by law, for the reason that notification of their final enrollment was deferred or delayed until your petitioners were likewise advised and informed that their enrollment had been set aside, and their case reopened. That thereafter your petitioners employed W. D. Halfhill as their attorney to represent them as counsel, but without waiving any right of your petitioners under the final enrollment of the Secretary of the Interior as hereinbefore set forth. That the Creek Nation employed as the attorney who should conduct the proceedings against them the J. G. Lieber aforesaid who theretofore had been the attorney for your petitioners. That the said J. G. Lieber gave no notice to your petitioners of the time and place of his proposed hearing of any testimony having in view the cancellation of the enrollment of your petitioner-, but, on August 22, 1906, took testimony against your petitioners without any opportunity for your petitioners to contest the same or to be represented by an attorney. That the record in the matter of the cancellation of your petitioners' enrollment shows that the said Lieber had the following notation made upon the testimony taken:

10 "The office of J. B. Campbell and the office of W. D. Halfhill were communicated with, and the said attorneys could not be found. J. G. Lieber called at the office of W. D. Halfhill and was notified that he was sick."

Your petitioners state that J. B. Campbell aforesaid never was the attorney for your petitioners. Your petitioners further state that the said W. D. Halfhill was sick in his bed at the time of the taking of the testimony, but sent a request that the hearing be postponed on account of his sickness, and the said request was by the said Lieber, acting as attorney for the Creek Nation, refused, and was refused likewise by the Commission to the Five Civilized Tribes, so that your petitioners had no opportunity to be represented by counsel, nor were they represented in person. Your petitioners

state that there was no cross examination of the witness adduced on behalf of the Creek Nation in the attempt to cancel the enrollment of your petitioners. That your petitioners, through their attorney W. D. Halfhill, requested that the witnesses should be recalled for an opportunity for cross examination, but the same never was afforded them, although your petitioners are advised that their attorneys understood that the opportunity would be afforded him before the case was closed. Your petitioners further allege that the case was closed without an opportunity for them to cross examine the witnesses produced by the Creek Nation, and without an opportunity to introduce evidence on their own behalf. Your petitioners allege that all of the aforesaid proceedings were arbitrarily and illegally taken, and deprived your petitioners of vested rights in the lands and funds of the Creek Nation without due process of law.

Your petitioners allege that after they learned what had been done they filed affidavits denying the truth of the allegations made against them, and asked an opportunity to have the case reopened, but the same was denied them. Your petitioners allege that thereafter the Secretary of the Interior arbitrarily and illegally undertook to deprive your petitioners of the rights by law vested in them, and issued an order directing that the names of your petitioners should be canceled, and the final approved freedmen rolls, of the Creek Nation and the aforesaid final approved rolls of freedmen citizens of the Creek Nation show that the names of your petitioners were stricken or attempted to be stricken from the aforesaid final approved rolls by the mutilation of said rolls as follows:

A line drawn through the name of each of your petitioners, and the writing after the same of the following:

"Canceled February 14, 1907. See 15,945-07."

Your petitioners aver on information and belief that the changes noted above were not noted on all of the freedmen rolls of the Creek Nation made in accordance with law prior to March 4, 1907, but that some of the rolls, as your petitioners believe, and therefore aver, have been changed and mutilated in accordance with the mutilation hereinabove set forth subsequent to March 4, 1907.

11 Your petitioners aver that the cancellation, or attempted cancellation of the enrollment of your petitioners is arbitrary, illegal, and a denial to your petitioners of due process of law as guaranteed to them by the Constitution and Laws of the United States.

9. Your petitioners further state that they have made demand on the respondent as Secretary of the Interior that he cause the lines run through your petitioners' names to be erased, and the notations placed opposite their names to be erased, and to restore your petitioners to the rolls of citizens of the Creek Nation, and to recognize your petitioners as fully and completely as freedmen citizens of the Creek Nation as he held they were entitled to recognition prior to the hereinbefore mentioned illegal and arbitrary act of respondent's predecessor in office in striking, or attempting to strike petitioners' names therefrom, and that this Honorable Court order and



direct the Honorable Secretary of the Interior to permit your petitioners to select a lawful allotment of land in the Creek Nation, and to share in the Creek tribal funds, the said Secretary of the Interior having refused heretofore to permit your petitioners to do other than make a tentative notation of the lands they desired to select in the event that it should be adjudged by the courts that the cancellation of your petitioners' enrollments was illegal, right of occupancy and all other rights as of the date of their attempted selection of lands being denied them.

Wherefore, inasmuch as the Honorable James Rudolph Garfield, Secretary of the Interior, has refused to restore your petitioners to the approved rolls of freedmen members or citizens of the Creek Nation, to remove the cloud placed by his predecessor in office on your petitioners' rights, claims and demands as enrolled freedmen citizens or members of the Creek Nation, to recognize your petitioners as lawfully enrolled freedmen citizens or members of said Nation, and to make valid selections of allotments, and to share in the tribal funds of the Creek Nation, and as the law provides no other adequate remedy in the premises whereby your petitioners can be protected in their lawful rights, whereof they are now unjustly and arbitrarily deprived by the Secretary of the Interior, the defendant hereto, your petitioners pray:

1. That a writ of mandamus may be issued and directed to the Honorable James Rudolph Garfield, Secretary of the Interior, commanding him to erase or cause to be erased the marks or notations made on the approved rolls of the freedmen members of the Creek Nation in derogation of your petitioners' rights or claims as duly and lawfully enrolled freedmen citizens or members of said Nation, to restore your petitioners to full and lawful enrollment as freedmen citizens or members in said Creek Nation, and to recognize your petitioners as lawful freedmen citizens or members of said Creek Nation, with all the rights and privileges thereunto appertaining.

2. For such other and further right or rights or relief as to the Court may seem proper and the nature of the cases of your  
 12 petitioners may require, and as in duty bound your petitioners will ever pray.

LUCY ANN TURNER,  
 DIXEY GRISWELL, AND  
 MAUDE TURNER,  
 WILLIE TURNER,  
 ANNA TURNER,  
 FLORENCE TURNER,

By Their Next Friend, LUCY ANN TURNER,

*Petitioners.*

KAPPLER & MERILLAT,  
 JAMES K. JONES,  
*Att'ys for Petitioners.*

Before the subscriber, a Notary Public in and for Western District of the Indian Territory, on the 22 day of October A. D. 1907, personally appeared Lucy Ann Turner, who made oath on the

Holy Evangels of Almighty God that she has read the petition by her subscribed, and that the facts by her set forth in said petition are true to the best of her knowledge, information and belief.

LUCY ANN TURNER.

Subscribed and sworn to before me this 22 day of — A. D. 1907.

[SEAL.]

W. N. BROOK,  
Notary Public, D. C.

My commission expires Oct. 5 1908.

### PETITIONERS' EXHIBIT A-1.

En. 531.

### DEPARTMENT OF INTERIOR, COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

In the Matter of the Application for the Enrollment of LUCY ANN TURNER, MAUD TURNER, ANNA TURNER, WILLIE TURNER, FLORENCE TURNER, and DIXEY GRISWELL as Creek Freedmen.

### *Decision.*

The record in this case shows that on July 8, 1904, Lucy Ann Turner appeared before the Commission to the Five Civilized Tribes at Muskogee, Indian Territory, and made application for the enrollment of herself and her five minor children, Maude Turner, Anna Turner, Willie Turner, and Florence Turner, and Dixie Griswell, as Creek freedmen.

The record further shows that on April 26, 1904, William L. Turner appeared before said Commission and made application for the enrollment of himself and his four minor children Anna  
13 Turner, Willie, Florence and Maud Turner as Creek freedmen, said Anna, Willie, Florence and Maud Turner are identified as the Anna, Willie, Florence, and Maud Turner for whom application was made on July 8, 1904, by said Lucy Ann Turner. The Application of William L. Turner will be considered in a separate decision.

Further proceedings were had June 16, 1905.

A copy of the testimony in the case of William L. Turner *et al.* is made a part of the record herein.

The evidence shows that said Lucy Ann Turner is the daughter of Mary Ann Grayson, whose name appears on the roll of Creek freedmen made by J. W. Dunn prior to March 14, 1867, and that she was born since said roll was made.

The evidence further shows that said Maud Turner, Anna Turner, Willie Turner, Florence Turner, and Dixey Griswell are the minor children of said Lucy Ann Turner. That all the applicants herein were born prior to April 1, 1899, and that they are now residents of the Creek Nation, they having recently removed to said Nation from the State of Tennessee, where they formerly resided. It is, therefore,

ordered and adjudged that said Lucy Ann Turner, Maud Turner Anna Turner, Willie Turner, Florence Turner, and Dixey Griswell are entitled to be enrolled as Creek freedmen in accordance with the provisions of the Acts of Congress of June 28, 1890 (30 Stats. 495) and March 1, 1901 (31 Stats. 861) and the application for their enrollment as such is accordingly granted.

TAMS BIXBY,  
*Commissioner.*

Muskogee, Ind. Ter., Jan. 12, 1906.

PETITIONERS' EXHIBIT A-2.

Cr. En. 531.

MUSKOGEE, I. T., *Jan.* 13, 1906.

M. L. Mott, Attorney for the Creek Nation, Muskogee, Ind. T.

SIR: There is herewith enclosed one copy of the decision of the Commissioner to the Five Civilized Tribes in the matter of the application for the enrollment of Lucy Ann Turner, Maud Turner, Anna Turner, Willie Turner, Florence Turner, and Dixey Griswell, as Creek freedmen.

You are hereby advised that the Creek Nation will be allowed 15 days from date hereof within which to protest against the enrollment of said persons, and if at the expiration of said time no protest has been filed, the above-named persons will be regularly listed for enrollment as Creek freedmen.

Respectfully,

TAMS BIXBY,  
*Commissioner.*

14

PETITIONERS' EXHIBIT A-3.

DEPARTMENT OF THE INTERIOR,  
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

In the Matter of the Enrollment of LUCY ANN, ANNA, WILLIE, and FLORENCE TURNER, and DIXEY GRISWELL as Freedmen Citizens of the Creek Nation.

*Motion to Reopen.*

Comes now M. L. Mott, attorney for the Creek Nation and moves the Honorable Secretary of the Interior to reopen and to grant a rehearing in the matter of the enrollment of Lucy Ann, Anna, Willie and Florence Turner, and Dixey Griswell, who have been enrolled as freedmen citizens of the Creek Nation, for the reason that your petitioner has just this to-day learned that these persons procured their enrollment through fraud.

Your petitioner was to-day informed by Mr. E. L. Merrick, who was the original attorney for said applicants, that while acting as their attorney said Merrick discovered that they were not entitled to enrollment, and that they were perpetrating a fraud upon the

Commission to the Five Civilized Tribes, and said Merrick withdrew from said case, and so notified the Commissioner to the Five Civilized Tribes.

Your petitioner further states that owing to the limited time in which he has to make this application, he is not able to file affidavits in support of this motion, but he is confident that if a rehearing is granted he will be able to show that said persons are not entitled to enrollment.

Your petitioner further states that said Merrick informed said applicants when he withdrew from their case that they were not entitled to enrollment, and he is informed that they have abandoned the case and returned to Texas.

M. L. MOTT.

Subscribed and sworn to before me this 25th day of June, 1906.

J. P. FARNSWORTH,  
*Notary Public.*

15

*Rule to Show Cause.*

Filed October 29, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49891.

THE UNITED STATES OF AMERICA *ex Relatone* LUCY ANN TURNER  
ET AL., Petitioners,

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

Mandamus.

On consideration of the petition filed herein, it is by the Court this 29 day of October, 1907, ordered that the Respondent, James Rudolph Garfield, Secretary of the Interior, show cause on or before the 15 day of November, 1907, why the writ of mandamus should not be issued as prayed.

WRIGHT *Justice.*

*Marshal's Return.*

Served copy of the within rule to show cause, together with copy of the petition in this cause, on James Rudolph Garfield, Secretary of the Interior, personally.

Oct. 29, 1907.

AULICK PALMER, *Marshal.*  
S.

*Answer.*

Filed January 2, 1908.

In the Supreme Court of the District of Columbia.

Law. No. 49891.

THE UNITED STATES *ex Rel.* LUCY ANN TURNER, DIXEY GRISWELL,  
and MAUDE, WILLIE, ANNA, and FLORENCE TURNER, Minors,  
Suing by Their Mother and Next Friend, LUCY ANN TURNER,  
Petitioner,

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

The respondent, for answer to the rule to show why the writ of mandamus should not issue as prayed in the petition filed herein, says:

16 That this court has no jurisdiction, by mandamus or otherwise, of the matters referred to in said petition, because said matters relate to the allotment of the lands of the Creek Indian Nation, one of the Five Civilized Tribes of Indians in the Indian Territory, and by the legislation of Congress and the agreements made by the United States with said nation, exclusive jurisdiction of all such allotment matters, including the making of rolls of members of said nation for allotment purposes, was originally conferred exclusively upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, and at the time of the occurrence of the matters complained of in said petition such exclusive jurisdiction had been devolved exclusively upon the Secretary of the Interior, and still resides in him so far as it is necessary to complete such allotment work.

Further answering, respondent says that he denies that the relators, or any of them, are freedmen citizens or members of the Creek Nation in the Indian Territory or Creek freedmen by blood, or that they are legally enrolled as such upon the rolls of members of the Creek Nation prepared in pursuance of the legislation relating to the allotment of lands in the Five Civilized Tribes in the Indian Territory, or possessed of any vested interest in the lands or other property of the said Creek Nation.

Respondent further says that the records of the Interior Department show that the relator Lucy Ann Turner appeared before the Commission to the Five Civilized Tribes on July 8, 1904, and made application for the enrollment as Creek freedmen of herself and her five minor children, Maude, Anna, Willie, and Florence Turner and Dixey Griswell; that upon the hearing before said Commission upon said application, said Lucy Ann Turner represented, by herself and her witnesses, that she was the daughter of Mary Ann Grayson, whose name appeared on the roll of Creek freedmen made by J. W. Dunn, under authority of the United States, prior to March 14, 1867, which roll was confirmed by the Act of Congress of June

28, 1898, section 21 (30 Stat., 495); that on January 12, 1906, upon the representations so made, the Commissioner to the Five Civilized Tribes, acting as the agent of the Secretary of the Interior, upon whom the duty of completing the unfinished business of the Commission was devolved by the Act of Congress of March 3, 1905 (33 Stat., 1060), decided that said Lucy Ann Turner and her said children were entitled to be enrolled as Creek freedmen; that on January 13, 1906, the Attorney for the Creek Nation was notified by the Commission of said decision and given fifteen days in which to protest against the enrollment of said persons; that no such protest was filed and the names of said persons were listed upon a partial schedule of Creek freedmen, which schedule was approved by Jesse E. Wilson, Assistant Secretary of the Interior, on June 16, 1906, and forms a part of the final rolls of the Creek Nation upon which allotments are made; that on June 25, 1906, M. L. Mott, the attorney for the Creek Nation, filed in the office of the Commissioner to the Five Civilized Tribes a motion, addressed to the Secretary

17 of the Interior, to reopen and grant a rehearing in the matter of the enrollment of said Lucy Ann Turner and her said children, upon the ground that said persons had procured their enrollment through fraud, which fact had just come to his knowledge through information received from Mr. E. L. Merrick, the original attorney for said persons, and on August 8, 1906, the affidavit of said Merrick as to such fraud was filed in the office of said Commissioner in support of said motion to reopen, copy of which motion and affidavit, marked Exhibits A and B, are attached hereto and prayed to be taken as a part hereof; that on August 13, 1906, said Commissioner reported these facts to the Secretary of the Interior with a recommendation that said motion to reopen be granted, a copy of which report, marked Exhibit C, is attached hereto and prayed to be taken as a part hereof; that on September 17, 1906, said Commissioner made another report to the Secretary of the Interior, in which, after referring to his report of August 13, 1906, upon said motion to reopen, he said:

"In view of the statements set out in said motion as to a previous attempt to influence Mitchell Grayson to testify so that Lucy Ann Turner and her children might be enrolled, it was deemed advisable to procure the immediate attendance of Mitchell Grayson and Dolly Stidham before this office, in order that no opportunity might be afforded for a further attempt to influence the testimony of these witnesses.

On August 22, 1906, said Mitchell Grayson and Dolly Stidham appeared before this office and testified in the matter of the right to enrollment of Lucy Ann Turner, *et al.* The Creek Nation was represented by attorney at this hearing but though an endeavor was made to secure the attendance of said W. D. Halfhill and J. B. Campbell, applicant was not represented at said hearing.

In view of the testimony of Mitchell Grayson and Dolly Stidham I am of the opinion that a further hearing in this case is unnecessary; that Lucy Ann Turner and her children Maude Turner, Anna Turner, Willie Turner, Florence Turner and Dixey Griswell, were

fraudulently enrolled as Creek Freedmen, and respectfully recommend that authority be granted for the striking of their names from the approved roll of Creek Freedmen.

It is further respectfully recommended that this matter be referred to the District Attorney for the Western District of Indian Territory for such investigation and other action as the premises may warrant.

Copy of transcript of testimony taken in proceedings had August 22, 1906, is inclosed herewith."

(A copy of said report, marked Exhibit D, is annexed hereto and prayed to be taken as a part hereof. A copy of the testimony taken in the proceedings before the Commissioner on August 22, 1906, marked Exhibit E, is also attached hereto and prayed to be taken as a part hereof.)

That by letter of November 7, 1906, C. F. Larrabee, Acting Commissioner of Indian Affairs, transmitted to the Secretary of the Interior the report of the Commissioner to the Five Civilized Tribes of August 13, 1906, transmitting the motion to reopen said case of Lucy Ann Turner *et al.*, and also the Commissioner's report of September 17, 1906, upon said case; that in said letter said Acting Commissioner of Indian Affairs stated that "on September 15, 1906, William W. Wright, of this city, filed in this office affidavits of Lucy Ann Turner and William M. Turner, in support of her application, and entered her appearance in this matter," which affidavits controverted the allegations of fraud made in said affidavit of E. L. Merrick; that said Acting Commissioner of Indian Affairs then stated the history of the case of Lucy Ann Turner and her children, and reviewed the testimony taken at said hearing of August 22, 1906, before the Commissioner to the Five Civilized Tribes, and said that such testimony "is conclusive in the opinion of the office that Lucy Ann Turner procured the enrollment of herself and her children by false impersonation and practiced a fraud on the Commissioner; and it therefore concurs in the recommendation of the Commissioner that authority be granted for the striking of their names from the approved roll of Creek freedmen, and that the matter be referred to the District Attorney for the Western District of the Indian Territory for an investigation." (A copy of said letter of the Acting Commissioner of Indian Affairs of November 7, 1906, marked Exhibit F, is attached hereto and prayed to be taken as a part hereof.)

That on February 14, 1907, the Secretary of the Interior, by Hon. Thos. Ryan, First Assistant Secretary of the Interior, acting upon said report of the Acting Commissioner of Indian Affairs contained in said letter of November 7, 1906, authorized and directed the cancellation of the names of Lucy Ann Turner and her said children from the said partial schedule of Creek freedmen approved as aforesaid June 16, 1906. (A copy of the Department's letters of February 14, 1907, to the Commissioner of Indian Affairs and the Commissioner to the Five Civilized Tribes, to that effect, and of the copies of said schedule in the possession of the Secretary and the



Commissioner of Indian Affairs showing that such cancellation was made, marked, respectively, Exhibits G, H, I and J, are attached hereto and prayed to be taken as a part hereof.)

Your respondent further says that, as he is informed and believes, the names of said persons were actually stricken from all the copies of said partial schedule prior to March 4, 1907, the time fixed by the Act of April 26, 1906 (34 Stat. 137), for the completion of said rolls.

Your respondent further says that at the time the names of said Lucy Ann Turner and her said children were stricken from said approved schedule neither she nor her children, nor anyone by or for them, had made any selection of land as an allotment, nor had they or either of them been given any allotment or received any allotment certificate, nor have they since that time obtained an allotment, or been given an allotment certificate.

Your respondent further says that the action of his predecessor in striking the names of Lucy Ann Turner and her said children from said approved partial schedule of members of the Creek  
19 Nation was in accordance with his long established and well recognized practice with respect to the rolls of the Five Civilized Tribes, as appears from an inspection of said rolls, he having exercised the right to strike names from such approved partial lists or schedules of members of said tribes down to the close of March 4, 1907, the date fixed by the Act of Congress of April 26, 1906 (34 Stat. 137), for the completion of such rolls, whenever, in his judgment, such names were improperly or erroneously placed thereon, and having, during that time, stricken several hundred names from said approved partial lists or schedules for said reasons, with and without notice, as the exigencies of each case seemed to demand. Respondent further says that there was no law, rule or regulation requiring the giving of notice and opportunity to be heard in such cases.

And your respondent further says that, as he is informed and believes, the enrollment of said Lucy Ann Turner and her said children was procured by fraud, and such relators are not freedmen members, or members by blood, or intermarriage, of the Creek Nation, and are not legally or equitably entitled to participate in the allotment and distribution of the lands and other property of the Creek Nation.

Wherefore respondent prays that the rule to show cause be discharged and the petition dismissed.

JAMES RUDOLPH GARFIELD,  
*Secretary of the Interior.*

EDWARD T. SANFORD,  
*Assistant Attorney General.*  
WILLIAM R. HARR,  
*Special Assistant to the Attorney General.*



DISTRICT OF COLUMBIA, ss:

James Rudolph Garfield, being first duly sworn, deposes and says:  
That he is the person referred to as respondent in the above answer; that he has read the contents thereof, and that the facts therein stated of his own knowledge are true, and those stated on information and belief he believes to be true.

JAMES RUDOLPH GARFIELD.

Subscribed and sworn to before me this — day of December, 1907.

[SEAL.]

EDW'D B. FOX,  
*Notary Public, D. C.*

20

EXHIBIT "A."

DEPARTMENT OF THE INTERIOR,  
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

In the Matter of the Enrollment of LUCY ANN, ANNA, WILLIE, and FLORENCE TURNER, and DIXIE GRISWELL as Freedmen Citizens of the Creek Nation.

*Motion to Reopen.*

Comes now M. L. Mott, Attorney for the Creek Nation, and moves the Honorable Secretary of the Interior to reopen and to grant a rehearing in the matter of the enrollment of Lucy Ann, Anna, Willie, and Florence Turner, and Dixie Griswell, who have been enrolled as Freedmen citizens of the Creek Nation, for the reason, that your petitioner has just this *today* learned that — persons procured their enrollment through fraud.

Your petitioner was to-day informed by Mr. E. L. Merrick, who was the original attorney for said applicants, that while acting as their attorney said Merrick discovered that they were not entitled to enrollment, and that they were perpetrating a fraud upon the Commission to the Five Civilized Tribes, and said Merrick withdrew from said case, and so notified the Commissioner to the Five Civilized Tribes.

Your petitioner further states that owing to the limited time in which he has to make this application, he is not able to file affidavits in support of this motion, but he is confident that if a rehearing is granted, he will be able to show that said persons are not entitled to enrollment.

Your petitioner further states that said Merrick informed said applicants when he withdrew from their case, that they were not entitled to enrollment, and he is informed that they have abandoned the case and returned to Texas.

M. L. MOTT.

Subscribed and sworn to before me, this 25th day of June, 1906.

[SEAL.]

JAY P. FARNSWORTH,  
*Notary Public.*

## EXHIBIT "B."

DEPARTMENT OF THE INTERIOR,  
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,  
MUSKOGEE, INDIAN TERRITORY.

In the Matter of the Enrollment of LUCY ANN, ANNA, WILLIE, and FLORENCE TURNER, and DIXIE GRISWELL as Freedmen Citizens of the Creek Nation.

*Motion to Reopen.*

Edward Merrick, on oath states that he is forty five years of age, a resident of Muskogee, Indian Territory, and at present is in the employ of the Commissioner to the Five Civilized Tribes in the capacity of law clerk; that in the summer of 1904 he was associated with John G. Lieber, an attorney at law, in the general practice of law; that he and said John G. Lieber were duly admitted to practice before the Commission to the Five Civilized Tribes; that some time during the summer of 1904, one William M. Turner, husband of Lucy Ann Turner, the principal applicant herein, employed said Lieber and affiant to look after the matter of the enrollment of the applicants herein and that affiant did on July 8, 1904, appear before the Commission with said Lucy Ann Turner and two or three witnesses produced by her, and at that time certain testimony was offered on behalf of the applicants.

Affiant further states that after the hearing had on July 8, 1904, a consultation was held in the office of said Lieber and affiant at which consultation said Lucy Ann Turner and her husband, William M. Turner, were present; that at this time the Turners were advised that in view of the fact that said Lucy Ann Turner was born prior to the making of the Dunn roll and her name not appearing thereon her chances for enrollment were very slight, even if she could establish the fact that she was the daughter of one Mary Ann Grayson whose name does appear on said Dunn roll; that said Lucy Ann Turner then said that she probably was not that old; that she had a brother Mitchell Grayson and a sister Dolly Stidham who would know and that she would have them consult us.

Affiant further states that afterwards said Mitchell Grayson did appear at the office of said Lieber and affiant and said positively that he had no such sister as Lucy Ann Turner and that he never heard of her before. Said Mitchell Grayson was so positive in his statements that some doubt arose in the mind of affiant whether the said Lucy Ann Turner was the person she represented herself to be. Mitchell Grayson further stated that he lived with his mother for many years and he knew she never had a child that would answer for said Lucy Ann Turner.

Affiant further states that two or three days after said Mitchell Grayson's visit to the office of said Lieber and affiant he (Mitchell

22 Grayson) called again and said that probably he was mistaken about not having a sister about the age of Lucy Ann Turner; that he could not say he did not have such a sister and that probably he did have one whom he never saw and who had been out of the Territory all her life. Affiant further states that after this interview with said Mitchell Grayson he (affiant) had a talk with William Turner, the husband of Lucy Ann Turner, at which time said Turner told affiant that said Mitchell Grayson would now testify all right as he had "fixed it up with him"; that Turner further stated that he could get all such testimony as might be required in order to have his wife and her children enrolled as Creek freedmen. Said Turner was informed by affiant that no "fixed" testimony would be allowed by the attorneys of applicant.

Affiant further states that he wrote to Dolly Stidham, the alleged sister of said Lucy Ann Turner, and received a reply in which she stated that she had no such sister as Lucy Ann Turner and that she knew her mother had no such child.

Affiant further states that upon receipt of this letter from Dolly Stidham denying relationship with principal applicant and in view of the statements made by Mitchell Grayson and the ability of said William M. Turner to produce any and all necessary evidence, he and Mr. Lieber concluded that the case was a fraudulent one and that further connection with the same was entirely out of the question and that they so informed William M. Turner who replied that the case had better be dropped; that affiant called at the office of the Commission and informed the clerk in charge of the Creek enrollment division that his (affiant's) and Mr. Lieber's connection with the Turner case had ceased and asked that the application for the enrollment of these people be withdrawn for the reason that *we* believed it to be fraudulent and without any merit whatever.

Affiant further states that he believed that this application had been withdrawn and knew no better until very recently.

EDWARD MERRICK.

Subscribed and sworn to before me this 8 day of August 1906.

[SEAL.]

HENRY G. HAINS,  
*Notary Public.*

EXHIBIT "C."

Cr. En. 531.

DEPARTMENT OF THE INTERIOR,  
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,  
MUSKOGEE, INDIAN TERRITORY, *August 13, 1906.*

The Honorable The Secretary of the Interior.

SIR: On January 12, 1906, decision was rendered by the Commissioner to the Five Civilized Tribes granting the application for the enrollment of Lucy Ann Turner and her five minor children, Maude Turner, Anna Turner, Willie Turner, Florence Turner and Dixey Griswell, as Creek freedmen.

The records of this office show that the names of said applicants are listed upon a partial schedule of Creek freedmen approved  
23 by the Secretary of the Interior June 16, 1906, opposite roll numbers 5650, 5651, 5652, 5653, 5654 and 5655, respectively. It does not appear from said records that allotment selections of land in the Creek Nation have been made by or for any said applicants.

There is inclosed herewith for Departmental consideration motion to reopen said cause filed with this office June 25, 1906. There is also inclosed an affidavit filed August 8, 1906, in support of said motion.

The statements set forth in said motion as grounds for rehearing are in substance as follows: that William M. Turner, husband of the principal applicant, retained the law firm of Merrick & Lieber to look after the matter of the enrollment of said applicants; that after the original hearing in said cause had on July 8, 1904, consultation was held in the office of said attorneys at which time said Lucy Ann Turner and her husband were present and were advised that in view of the fact that said Lucy Ann Turner was born prior to the making of the Dunn roll and her name not appearing thereon, her chances for enrollment were very slight even if she could establish the fact that she was the daughter of one whose name appears on said roll; that said Lucy Ann Turner then said that she probably was not that old, that she had a brother Mitchell Grayson and a sister Dolly Stidham who would know and she would have them consult said attorneys; that afterwards said Mitchell Grayson appeared at the office of said attorneys and said positively that he had no such sister as Lucy Ann Turner and that he never heard of her before, that he lived with his mother for many years and knew she never had a child that would answer for said Lucy Ann Turner; that at a later date said Mitchell Grayson stated to said attorneys that he was probably mistaken about not having a sister about the age of Lucy Ann Turner, that probably he did have one whom he never saw and who had been out of the territory all her life; the said affiant later had a talk with said William M. Turner, at which time Turner stated that Mitchell Grayson would now testify all right as he had "fixed it up with him"; that said affiant wrote Dolly Stidham, the alleged sister of said Lucy Ann Turner, and received a reply in which she said she had no such sister as Lucy Ann Turner and that she knew her mother had no such child; that said affiant and his law partner, Mr. Lieber, upon receipt of said letter from Dolly Stidham and in view of the statements of Mitchell Grayson and William M. Turner, concluded that the case was a fraudulent one, that they so informed William M. Turner who replied that he guessed it had better be dropped; that said affiant informed the clerk who was at that time in charge of the Creek enrollment division of the Commission that the connection of his firm with the Turner case had ceased and asked that the application be withdrawn for the reason that it was considered by said attorneys to be fraudulent and without merit.

There is no record on file to show that said attorneys informed this office that they had withdrawn from the case or that they con-

sidered it fraudulent. The decision of the Commissioner enrolling said applicants was based upon the evidence.

24 Lucy Ann Turner testified on July 8, 1904, that she was born in the year 1861 and in later proceedings had on June 16, 1905, said applicant testified that she was born in the year 1868.

I am of the opinion that the contradiction in the testimony as to the date of birth of the principal applicant, when considered in connection with the statements set out in said motion, are sufficient to warrant a presumption of fraud and I respectfully recommend that said motion to reopen be granted in order that the testimony of Mitchell Grayson and Dolly Stidham, the alleged brother and sister of the principal applicant, may be secured, also such other evidence as may be necessary to establish the facts in the case.

The entire record in the matter is inclosed herewith.

Respectfully,

TAMS BIXBY,  
*Commissioner.*

Through the Commissioner of Indian Affairs.

A. G.-2.

#### EXHIBIT "D."

Cr. En. 531.

DEPARTMENT OF THE INTERIOR,  
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,  
MUSKOGEE, INDIAN TERRITORY, *September 17, 1906.*

The Honorable the Secretary of the Interior.

SIR: August 13, 1906, there was transmitted for departmental consideration motion to reopen in the matter of the application for the enrollment of Lucy Ann Turner, *et al.*, as Creek Freedman, together with report of the Commissioner in same. In said report it was stated that "the contradiction in the testimony as to the date of birth of the principal applicant, when considered in connection with the statements set out in said motion, is sufficient to warrant a presumption of fraud," and it was recommended that said motion be granted in order that the testimony of Mitchell Grayson and Dolly Stidham, the alleged brother and sister of the principal applicant, might be secured.

August 18, 1906, there was filed with this office a power of attorney signed by Lucy Ann Turner appointing W. D. Halfhill and J. B. Campbell as her attorneys in the matter of the enrollment of herself and children, and revoking the former power of attorney issued by her to E. C. Merritt (presumably referring to Edward Merrick).

In view of the statements set out in said motion as to a previous attempt to influence Mitchell Grayson to testify so that Lucy Ann Turner and her children might be enrolled, it was deemed advisable to procure the immediate attendance of Mitchell Grayson and Dolly Stidham before this office, in order that no opportunity might be afforded for a further attempt to influence the testimony of these witnesses.

On August 22, 1906, said Mitchell Grayson and Dolly Stidham

appeared before this office and testified in the matter of the right to enrollment of Lucy Ann Turner, *et al.* The Creek Nation was represented by attorney at this hearing but though an endeavor was made to secure the attendance of said W. D. Halphill and J. B. Campbell, applicant was not represented at said hearing.

In view of the testimony of Mitchell Grayson and Dolly Stidham I am of the opinion that a further hearing in this case is unnecessary; that Lucy Ann Turner and her children Maude Turner, Anna Turner, Willie Turner, Florence Turner and Dixey Griswell, were fraudulently enrolled as Creek Freedmen, and respectfully recommend that authority be granted for the striking of their names from the approved roll of Creek Freedmen.

It is further respectfully recommended that this matter be referred to the District Attorney for the Western District of Indian Territory for such investigation and other action as the premises may warrant.

Copy of transcript of testimony taken in proceedings had August 22, 1906, is inclosed herewith.

Respectfully,

TAMS BIXBY,  
*Commissioner.*

Through the Commissioner of Indian Affairs.  
J. C. L.-8-1.

#### EXHIBIT "E."

Cr. En. 531.

DEPARTMENT OF THE INTERIOR,  
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,  
MUSKOGEE, INDIAN TERRITORY, *August 22, 1906.*

In the Matter of the Right to Enrollment of LUCY ANN, MAUDE, ANNA, WILLIE, and FLORENCE TURNER, and DIXEY GRISWELL as Creek Freedmen.

Appearances: J. G. Lieber acting for M. L. Mott, attorney for Creek Nation.

The office of J. B. Campbell and the office of W. D. Halphill were communicated with and the said attorneys could not be found. J. G. Lieber called at the office of W. D. Halphill and was informed that he was sick.

MITCHELL GRAYSON being first duly sworn, testified as follows:

Questions by COMMISSIONER:

- Q. What is your name? A. Mitchell Grayson.
- Q. How old are you Mitchell? A. I am 53.
- Q. What is your post-office address? A. Summit.
- Q. Are you a citizen of the Creek Nation? A. Yes sir, I am.
- Q. You have received your allotment have you? A. Yes, sir.
- Q. You are a Creek freedman? A. Yes, sir.
- Q. What was the name of your mother? A. Mary Ann Grayson.

26 Q. Is she living? A. No sir, she is dead.  
Q. When did she die? A. It is about 9 years since she died.

Q. Was your father a citizen of the Creek Nation? A. Yes, sir, my father died though during the war.

Q. How many children did your mother have? A. My mother had Bob and Josh and Sam and Ben and Tom and me, five and three girls.

Q. What was the names of the girls? A. The oldest one was named Tilda. The next was Dolly Stitum. The next was Fannie Tobler.

Q. Is that all the children your mother ever had? A. Those are the onliest children mother ever had.

Q. Did you live with your mother or near her most of your life? A. I lived right with her all the time until she got so she couldn't get around, and after I got married she lived with me. I am the youngest child.

Q. How many times was your mother married did you say? A. Never was married but twice. She was married back in the old country they came from Alabama here, and after she came here she married my father.

Q. What children had she by her husband in Alabama? A. Tilda and Sam.

Q. Did she bring them with her here? A. Yes sir.

Q. Is that all the children she brought with her? A. Those are the onliest two she had.

Q. Do you know the name of her first husband? A. Hillibee Charles.

Q. When she came to this country she married another man? A. Yes sir.

Q. What was the name of her second husband? A. Jacob Bruner.

Q. Was he a citizen of the Creek Nation? A. Yes sir.

Q. Did he ever separate from your mother? A. Never did until he died. He died during the war.

Q. How long before your mother's death did he die? A. He died in '61. If I am not mistaken he died over here near Gibson and mother stayed single and stayed with her child until we were all grown.

Q. How old was she when she died? A. Napoleon Moore said she was 103 years old when she died.

Q. Then she died about 9 years ago? A. Yes sir.

Q. Are there any old people living in the same community in which your mother lived and who knew her most of her life and as to how many children she had? A. Yes, I can get a whole lot of them, Indians and colored.

Q. Would you name one or two of those people? A. There is old man Wash Grayson at Eufala, Captain Grayson and these two men in the room here.

Q. What are their names? A. John Roberts and Dick Bruner.



Q. How many of these children are left of these 5 boys and 3 girls? A. I am the onliest one, I and Dolly Stitum.

Q. Is Dolly here today? A. I don't know whether she is or not.

27 Q. Did your mother ever live with any other men after the death of your father? A. No sir, never did.

Q. You are sure she had no children except the ones you have named? A. Yes sir, I am sure.

Q. When did your mother reach the territory? A. I couldn't tell you that.

Q. Was it before or after the war? A. Way before the war.

Q. Did your mother die before the opening of the Creek Land office? A. Yes sir.

Q. How long before? A. About a year.

Questions by JOHN G. LIEBER, acting for Creek Nation:

Q. Mitchell did your mother have any brothers or sisters? A. Yes, she had a whole lot of brothers and sisters.

Q. Can you give their names? A. Yes, I guess I can. There is old man Robbin Grayson, Ben Grayson, Joe Hutton, Doc Crabtree, Dick Grayson.

Q. Is that all? A. That is all the brothers.

Q. Did your mother have any sisters? A. Yes sir.

Q. Name them? A. There was Pussy Barnett across the river. Bessie Burney, Jennie Alexander, that is all I know. Of course she had more but they died before they came to my recollection.

Q. Do you know a woman by the name of Lucy Ann Turner? A. No sir. I seen the nigger once but I don't know her.

Q. Did you ever know of a woman in your family by the name of Lucy Ann? A. No sir.

Questions by COMMISSIONER:

Q. Did anyone by the name of Lucy Ann Turner ever write to you or ever come to you and talk with you? A. She wrote to me and went to Dolly and Dolly gave her a cussing and she went off and we never have seen her.

Q. Dolly who? A. Stitum.

Q. Have you that letter? A. I threw it away.

Q. What did she say in that letter? A. She said she was a sister of ours, I said I didn't know anything about it, she said she was 26 years old and I knew that was a lie because I have a boy 26 years old and my mother was an old woman when I came to my recollection. I don't know anything about that nigger woman.

Q. Do you think you would have known something about it if your mother had a daughter by the name of Lucy Ann? A. It looks like I ought to, I was raised right with her and I know her and know I am the youngest one of the children.

Q. Did you answer that letter that you got from Lucy Ann Turner? A. No sir.

Q. You never saw her to talk with her did you? A. I saw her and talked with her and told her I didn't know anything about her



and that she was nothing but a state woman. I said mother only had three girls and I knew them all.

Q. What did she say to you when you had that talk with her?

28 A. She said she was a sister of mine and I said no, you make a mistake, it might have been somebody else, and she said no somebody told her that her mother's name was Mary Ann Grayson, and I know that mother never did have a child like you, I told her, I said who was your father? And she said I forget his name. And I said well my father took me in to Arkansas and I stayed there all the time, and I said to her, I don't know anything about you and Dolly is the oldest and if she says that you are mother's child it is all right with me and Dolly gave her a cussing and said she would put her in jail if she came back there again and I never did see her since.

Q. Is your sister Dolly Stitum here today? A. I don't know whether she was subpoenaed here but I guess she will be here sometime today.

Q. Do you remember of meeting the husband of Lucy Ann Turner, a man named William M. Turner? A. He was at my house.

Q. Did you come to Muskogee with him? A. Yes, I came with him.

Q. Did he take you up in a law office? A. I went with him to some of these law offices and I told them lawyers I didn't know nothing about this woman, she was too young to be my mother's child, I said I was the youngest one of the bunch and she never was married after my father died and I can prove that.

Q. Where did you have that talk with Lucy A. Turner, here in Muskogee or did she come to your house? A. No, she never was at my house.

Q. You saw her here in Muskogee, did you? A. I saw her here in Muskogee, but I didn't have any talk with her at that time. When I saw her, I said you are not my sister because I don't know anything about you and if mother had any other children younger than me I ought to know it. All the girls were older than I was.

Q. You stated a minute ago that you met Lucy Ann Turner here in Muskogee and didn't have a talk with her. — I met her in Muskogee and she came up to me and said I am your sister and I said no sir you are not my sister.

Q. Then you did have a talk with her? A. Yes sir.

Q. Did you mean you did most of the talking? A. Yes sir, first her husband came to my house, that nigger, and he stayed there a day or two to bring some cotton hands over and when we came back this woman was here and she spoke to me, and I said No, you are no sister of mine and you go to Dolly and if she claims you as a sister she knows.

Q. You would probably know as much about your sisters and your mother's children as Dolly would, wouldn't you? A. It looks like I ought to. I know mother never did marry after father died.

PETER BRUNER, being first duly sworn, testified as follows:

Questions by J. G. LIEBER, acting for Creek Nation:

Q. What is your name? A. Peter Bruner.

Q. How old are you? A. About 75 years old this month.

Q. What is your post-office address? A. Edna, Indian Territory.

29 Q. Do you know Mitchell Grayson who has just left the witness stand? A. Yes sir.

Q. How long have you known him? A. I have known him from a child on up.

Q. Ever since he was born? A. Yes sir.

Q. Do you know his mother? A. Yes sir.

Q. What was her name? A. Mary Ann Grayson. They called her Mary Ann Bruner and changed around to Mary Ann Grayson. Called her Mary Ann Grayson and Mary Ann Bruner.

Q. Is she related to you? A. She was my step-mother.

Q. Are you a citizen of the Creek Nation? A. Yes sir.

Q. Were you well acquainted with the family of Mary Ann Grayson? A. I think I do, I might forget some of them but I know the best of them anyhow.

Q. But did you live with them? A. Yes sir, we moved back on this side and went over the river. First we lived on this side of the Canadian river west of Eufaula and went on the other side of the river then and then came back and went back to where we are living now. She died up here at Okmulgee.

Q. How often did you see Mary Ann Grayson from the time she was a grown woman until she died? A. She came from the country in 1827.

Q. From that time how often did you see Mary Ann Grayson? A. Often times, she was my step-mother you know and I lived with them 5 or 6 months.

Q. Did you see her as often as once a year from that time until she died? A. Oh yes.

Q. Give the names of her children as nearly as you can? A. The first two children she had were (not?) my father's children. Tilda and Bull, we call him Bull that was his given name.

Q. What was the name of her other children? A. They were my father's children as far as I can remember them. One they called Bob, Mitchell, Josh, and Dolly and Fannie. I may have left out some, I may have forgotten some.

Q. Do you know a person by the name of Lucy Ann Turner? A. I might but I don't know her.

Q. Did you ever hear of a child in Mary Ann Grayson's family by the name of Lucy Ann? A. Not until today when you asked that question.

Q. If she would have had a child by that name would you have known it? A. I might have heard it at that time.

Q. Did you know Mary Ann Grayson until she died? A. Yes sir.

JOHN ROBERTS being first duly sworn testified as follows:

Questions by JOHN G. LIEBER, acting for Creek Nation:

Q. What is your name? A. John Roberts. Some call me John Cat. I have two names.

Q. How old are you John? A. I am 63.

Q. What is your post-office address? A. Taft.

Q. Are you a citizen of the Creek Nation? A. Yes sir.

30 Q. Do you know Mitchell Grayson who testified as a witness in this case a few minutes ago? A. Yes sir.

Q. How long have you know him? A. It has been a good while it must have been about 50 years I reckon, I knew him when he was a kid.

Q. Have you known him ever since he was born? A. Yes sir.

Q. Did you know his mother? A. Yes sir.

Q. What was her name? A. Mary Ann Grayson.

Q. How long have you known Mary Ann Grayson? A. Well I know her since I came to my senses, that was my uncle's wife.

Q. Did you know her from that time until she died? A. Yes sir.

Q. Did you see her often? A. Yes sir.

Q. Did you live in the same neighborhood with her? A. No, she had moved up there to Okmulgee, but I used to go up there all the time.

Q. How often did you see her John? A. Once a year sometimes twice or three times.

Q. During the year? A. Yes sir.

Q. Are you well acquainted with the family? A. Yes sir.

Q. Do you know her children? A. Yes sir.

Q. Give their names? A. Well there was Tilda and Bull, they was another man's children, and Bob and Dolly and Josh and Ben, one they called Fannie Palmer and Mitchell.

Q. Did you ever hear of Mary Ann Grayson having a child named Lucy Ann? A. No sir not until this morning.

Q. If she had had a child by that name would you have known it? A. I would have been bound to know it.

Q. What relation are you to Mitchell Grayson? A. Mitchell's father and my father are two brothers. That would make us first cousins.

Q. Did Mary Ann Grayson ever have any children younger than Mitchell? A. No sir, Mitchell was the baby child.

DOLLY STITUM being first duly sworn, testified as follows:

Questions by JOHN G. LIEBER, acting for Creek Nation:

Q. What is your name? A. Dolly Stitum.

Q. How old are you Aunt Dolly? A. I guess I is about 65.

Q. What is your post-office address? A. Okmulgee.

Q. Are you a citizen of the Creek Nation? A. Yes sir.

Q. Do you know Mitchell Grayson who is sitting by you? A. Yes sir, I know him, I raised him, he is my brother.

Q. Did you and William Grayson have the same mother? A. Yes one father and one mother.

Q. What was your mother's name? A. Mary Ann Grayson, my father's name was Jacob Bruner, but we used to go by our own names.

Q. Did your mother have any children older than you Aunt Dolly? A. Yes sir.

Q. Did your mother have any other children besides you? A. Yes, sir, her first child was Tilda Grayson.

Q. The next one? A. He was named Sam Grayson.

31 Q. Did he have any other name besides Sam? A. We nick-named him kind a funny, we called him Bull.

Q. What was her next child then? A. Bob was the next. Bob Grayson but he is dead he got killed during the war.

Q. Do you know all of your mother's children? Give their names besides those you have just named? A. I will go way back—there was Tilda first and Sam we called him Bull he was the second. Bob Grayson, Dolly Stitum, used to have been Dolly Grayson. Joshua Grayson, Ben Grayson, we used to call him, nick name Kiver, it might be down that way I don't know.

Q. Next one? A. Fannie Grayson.

Q. Next one? A. Manuel Grayson.

Q. Next one? A. Mitchell Grayson.

Q. Are there any others Dolly? A. No sir, if I am not mistaken I think she had only 9 children, if I am not making a mistake.

Q. Was there one by the name of Palmer? A. That was Manuel. That was his nick name, Palmer.

Q. Was Mitchell Grayson your mother's youngest child? A. Yes he was the baby.

Q. Did she ever have any children after him? A. No sir never had any children after him.

Q. Do you know a woman by the name of Lucy Ann Turner? A. No sir.

Q. If she would have had a child by that name would you have known it? A. Yes sir, I would have been bound to know it.

Q. Did you know your mother at the beginning of the Civil War? A. Yes sir, I lived right by her in the same adjoining yard.

Q. Did you continue to live near to her from that time until she died, Aunt Dolly? A. Yes sir. Of course I parted from mother two years we went down South, we went as far as Baldy in the Choctaw Nation and mother she went to Ft. Gibson, never went any further.

Q. With the exception of that two years that she was away from you during the war, was she ever away from you any considerable time after that? A. No sir, I lived right by my mother and I buried her.

Q. Did you live right by your mother from the time peace was declared until she died? A. Yes sir, and I buried my mother.

Q. Never heard of her having a child named Lucy Ann? A. No sir, my mother said we was all the children she ever had.

## Questions by COMMISSIONER:

Q. Did you have a conversation with anyone by the name of Lucy Ann Turner? A. Yes sir.

Q. Did she come to your house to talk with you? A. Yes she came at the time she wrote me a letter first, though.

Q. Have you that letter? A. No sir, I haven't got it.

Q. What was said in that letter? A. She just wanted to claim my mother was her mother.

Q. Did you answer the letter? A. No sir, I didn't because I knew mother didn't have any children like that.

32 Q. After she wrote that letter did she call on you in person? A. Yes sir.

Q. What did she say to you? A. When she first came up I was at the church, at the Indian church and they hired my daughter to go and call me, so we came up, that was on Sunday and came to my daughter's house in Okmulgee, and I saw her there.

Q. What did she say to you? A. Her husband came up and said that was my sister; that was while I was in the wagon before I got down and I told him if I had any sister outside of me, I didn't know it. I knew where all of my sisters was buried and if I got any other I ought to know it.

Q. Did you tell Lucy Ann Turner that? A. Yes sir. She said it looks like I am your sister because my mother was your mother.

Q. That is what she said? A. Yes sir, and I said to her my mother didn't have only the three girls and I named them. Her first child was named Tilda I told her, and the next one was named Sam and the second was named Bob, and I told her then it was me, and one named Josh and a sister named Fannie, I told them she was dead, and I have a brother named Mitchell and a half brother named Dick Bruner. Then she said like this to me, ain't you got no older brothers than you and I said yes, and -he said suppose I claim one of them to be my father and I said that is your business but I will not do it.

Q. Did she use that expression, "suppose I claim one of those brothers to be my father"? A. Yes and she paid me \$2.00 to come down here and I didn't come because I didn't suppose to come before the Dawes Commission and swear any lie, I I am going to tell the truth and if it will do good it will do good and if it is going to hurt it will hurt, and I told them I would come and I didn't do it. And he sent a man out there, he got into a scrap about taking somebody's mule and got some money on it, and she sent that man to get me to come down and said if I could fix it up to come and say she was my brother's child she would give me a \$100. And I said I have got \$2500 cash money in my pocket and in my hand, that I wasn't poor and I turned the money back.

Q. Was it a colored man that came for you? A. Yes sir. I said I will state what I know to the Dawes Commission and he said if I take you in today you will ruin us, and now you know the truth.

Q. Have you seen the man since he offered you the money? A. No sir.

Q. Do you know whether he lived in Muskogee? A. No sir he lived in Okmulgee. Her husband was in Jail but he sent this man out to see if he could get me.

Q. Have you seen her since? A. No sir, I never seen her since.

Q. Have you heard from her since then? A. No sir, it has been two years ago because I know it has been two years since I seen her. The first time he wrote he was at my brother's house and they called me to the office in Okmulgee and I was just going out, he sent a boy up to tell me to come that they had news for me, but anyway

33 I was in town and they overtook me as I was going home and I turned back, I can't hear very good, so I told him to go to the phone and see who it was and they said it was my brother and he told me to be up at Choske and he would be there to meet me and take me to his house and I didn't do it. I got in the wagon and went to the Indian meeting.

MITCHELL GRAYSON, being recalled testified as follows:

Questions by COMMISSIONER:

Q. You told of a conversation you had with Lucy Ann Turner, did she offer you any money to testify? A. Yes she said she would give part of her land if she gets it. I said you go to Dolly and if she claims to be your sister it is all right with me, and I said too many state niggers come in here now, that is how we got cut off so short with our land and I won't swear no lie for you.

This is all the evidence taken in said cause at said time.

I, Julia C. Laval on my oath state that the above and foregoing is a true and complete transcript of my stenographic notes as taken by me on said date in said cause.

JULIA C. LAVAL.

Subscribed and sworn to before me this 7 day of September, 1906.  
[SEAL.] EDWARD MERRICK,

*Notary Public.*

EXHIBIT "F."

DEPARTMENT OF THE INTERIOR, E. B. H.,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, November 7, 1906.

*Refer in reply to the following:*

Land  
70862-1906  
80421- "  
83247- "

The Honorable The Secretary of the Interior.

SIR: I have the honor to submit herewith a communication from the Commissioner to the Five Civilized Tribes, dated August 13,

1906, transmitting a motion to re-open the Creek enrollment case of Lucy Ann Turner, *et al.*; also a communication dated September 17, 1906, reporting on the same case.

On September 15, 1906, William W. Wright, of this city, filed in this office affidavits of Lucy Ann Turner and William M. Turner, in support of her application, and entered his appearance in this matter. Lucy Ann Turner appeared before the Commission to the Five Civilized Tribes on July 8, 1904, and made application for the enrollment of herself and her five minor children as Creek freemen.

34 The evidence produced at that time went to show that Lucy Ann Turner was the daughter of one Mary Ann Grayson, whose name appeared on the roll of Creek freedmen made by J. W. Dunn prior to March 14, 1867, and that the applicant was born since the roll was made, and on January 12, 1906, Mary Ann Turner was enrolled as a Creek freedman in accordance with the provisions of the act of Congress of June 28, 1898. (30 Stat. 495.)

On June 25, 1906, the attorney for the Creek Nation filed a motion to re-open and re-hear the case, setting out that his motion was based on the alleged fact that the enrollment of these persons was procured through fraud, inasmuch as he had learned through their original attorney that while acting for them he had discovered that they were not entitled to enrollment and were perpetrating a fraud on the Commission to the Five Civilized Tribes, and that he thereupon withdrew from the case and notified the Commission to the Five Civilized Tribes of that fact.

The Commissioner took testimony in this matter on August 22, 1906. Mitchell Grayson, aged 53, and a Creek freedman, whose mother was Mary Ann Grayson, testified that his mother died about nine years ago; that she was the mother of five boys and three girls, the boys being named Bob, Josh, Sam, Ben, Tom and the witness Mitchell, and that the girls were named Tilda, Dolly and Fannie; that he lived with his mother all his life until he was married, and then she moved in and lived with him, and that he was the youngest child; that he knew of no person by the name of Lucy Ann Turner, and was positive that she is not his sister or related to him in any way; that Lucy Ann Turner wrote a letter to him at one time and went to his sister, Dolly Stidham, claiming to be her sister, but that Dolly Stidham denied the fact.

The testimony of Peter Brewer, 75 years old, and residing at Edna, was that he had known Mitchell Grayson from a child up; knew his mother, Mary Ann Grayson, and that she was his step-mother; that he knew all of her children and that he never heard of any child in Mary Ann Grayson's family by the name of Lucy Ann, and never heard of her until the day he gave his testimony.

John Roberts, aged 63, testified that he had known Mitchell Grayson for about 50 years; also that he knew Mary Ann Grayson during her life time; knew that Mitchell Grayson was her youngest child; was able to name all of her children in their order, and had never heard of the child by the name of Lucy Ann until the morning he gave his testimony, and said that he would be bound to know of such child, had there ever been one.



The testimony of Dolly Stidham was to the effect that Mary Ann Grayson was her mother; was able to name the children in their order, saying that Mitchell Grayson was her mother's youngest child and that she had no child by the name of Lucy Ann. She detailed at some length the efforts made by Lucy Ann Turner to induce her to accept her as a sister and then asked witness if she had brothers older than she and proposed then that she claim one of the older brothers as her father, and proposed that if she was successful in this, that she would pay the witness \$100.

35 The testimony submitted in the Commissioner's letter of September 17, 1906, is conclusive in the opinion of the office that Lucy Ann Turner procured the enrollment of herself and her children by false impersonation and practiced a fraud on the Commissioner; and it therefore concurs in the recommendation of the Commissioner that authority be granted for the striking of their names from the approved roll of Creek freedmen, and that the matter be referred to the District Attorney for the Western District of the Indian Territory for an investigation, and such further action as the premises may warrant the District Attorney in taking after he investigates the matter.

Very respectfully,

C. F. LARRABEE,  
*Acting Commissioner.*

EWE—SD

# EXHIBIT "G."

I. T. D. 22508-1906.

DEPARTMENT OF THE INTERIOR, Y. P.  
WASHINGTON, *February* 14, 1907. L. L. B.

L. R. S.

Commissioner of Indian Affairs.

SIR: Referring to your office letter of November 7, 1906 (Land 83247), there is inclosed departmental letter to be forwarded to the Commissioner to the Five Civilized Tribes, authorizing the cancellation of the names of Lucy Ann Turner and her five minor children, Maude, Anna, Willie, and Florence Turner, and Dixey Griswold, opposite Nos. 5650, 5651, 5652, 5653, 5654, and 5655, respectively, upon a partial schedule of Creek freedmen approved by the Department June 16, 1906.

You are requested to take similar action upon the copy of said schedule in your possession.

Local attorney should be advised hereof.

Respectfully,

THOS. RYAN,  
*First Assistant Secretary.*

1 inclosure.



## EXHIBIT "H."

DEPARTMENT OF THE INTERIOR, Y. P.  
WASHINGTON, *February* 14, 1907. L. L. B.

I. T. D. 22508-1906.  
L. R. S.

Commissioner to the Five Civilized Tribes, Muskogee, Indian Territory.

SIR: It appears from your letter of August 13, 1906, that Lucy Ann Turner and her five minor children, Maude, Anna, Willie, and Florence Turner, and Dixey Griswold, have been listed upon a partial schedule of Creek freedmen approved by the Department  
36 June 16, 1906, opposite roll numbers 5650, 5651, 5652, 5653, 5654 and 5655, respectively.

You inclosed for departmental consideration a motion by the nation's attorney to reopen said case, filed in your office June 25, 1906, and also affidavits in support of such motion.

In your letter you recommended, for reasons stated, that the motion be granted in order that certain testimony might be taken in the case.

In letter of September 17, 1906, submitting affidavits, for reasons fully set out, you found that a further hearing in the case was unwarranted, and recommended that the name of the applicants be stricken from the partial schedule and that this matter be referred to the United States attorney for the western district of Indian Territory for such investigation and other action as the premises might warrant.

The Indian Office, in letter of November 7, 1906, submitting your reports, concurred in your recommendations. It stated that it was convinced that Lucy Ann Turner procured the enrollment of herself and her children by false impersonation, and practiced fraud upon your office.

As it is apparent that the names of the applicants were placed upon the schedule by reason of false and fraudulent testimony, your recommendation is concurred in, and you are authorized to strike their names from the partial schedule in your possession. Their names have been stricken from the schedule in the possession of the Department.

The Indian Office has been authorized to take similar action relative to the part of the schedule in its possession.

The papers received with your letters are inclosed, and you are authorized to call the attention of the proper United States attorney to this matter, with a view to the prosecution of guilty parties.

A copy of Indian Office letter is inclosed.

Respectfully,

THOS. RYAN,  
*First Assistant Secretary.*

7 inclosures.

## EXHIBIT "I."

*Creek Roll, Freedmen.*

[New-born.]\*

Act of Congress Approved March 3rd, 1905. (Public No. 212.)

No.	Name.	Age.	Sex.	Card No.
*	*	*	*	*
[5650]	Canceled See 15945/1907 Feb. 14, 1907. Turner, Lucy Ann.....	37	F	1882]*
[5651]	Canceled See 15945/1907 Feb. 14, 1907. Turner, Maude.....	12	F	1882]*
37				
[5652]	Canceled See 15945/1907 Feb. 14, 1907 Turner, Anna.....	18	F	1882]*
[5653]	Canceled See 15945/1907 Feb. 14, 1907. Turner, Willie.....	16	M	1882]*
[5654]	Canceled See 15945/1907 Feb. 14, 1907. Turner, Florence.....	9	F	1882]*
[5655]	Canceled See 15945/1907 Feb. 14, 1907. Griswell, Dixey.....	19	F	1882]*
*	*	*	*	*

Department of the Interior,  
Washington, D. C., June 16, 1906.

Approved:

JESSE E. WILSON,  
*Assistant Secretary.*

L. R. S.

(Copied from roll in the office of the Commissioner of Indian Affairs.)

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[\* Words and figures enclosed in brackets erased in copy.]

EXHIBIT "J."

Creek Roll, Creek Freedmen.

[New-born.]\*

[Act of Congress Approved March 3rd, 1905. (Public No. 212)]\*

No.	Name.	Age.	Sex.	Card No.
*	*	*	*	*
	Canceled Feb. 14/07-322/220-1.			
[5650	Turner, Lucy Ann.....	37	F	1882]*
	Canceled Feb. 14/07-322/220-1			
[5651	Turner, Maude.....	12	F	1882]*
	Canceled Feb. 14/07-322/220-1			
[5652	Turner, Anna.....	18	F	1882]*
	Canceled Feb. 14/07-322/220-1			
[5653	Turner, Willie.....	16	M	1882]*
	Canceled Feb. 14/07-322/220-1			
[5654	Turner, Florence.....	9	F	1882]*
	Canceled Feb. 14/07-322/220-1			
[5655	Griswell, Dixey.....	19	F	1882]*
*	*	*	*	*

Department of the Interior,  
Washington, D. C., Jun- 16, 1906.  
JESSE E. WILSON,  
Assistant Secretary.  
L. R. S.

(Copied from rolls in the Office of the Secretary of the Interior.)

38

Demurer.

Filed January 6, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49891.

THE UNITED STATES *ex Rel.* LUCY ANN TURNER ET AL., Petitioners, .  
*vs.*  
JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

The petitioners say that the answer filed by respondent in the  
above entitled cause is bad in substance.  
KAPPLER & MERILLAT,  
*Attorneys for Petitioners.*

[\* Words and figures enclosed in brackets erased in copy.]

NOTE.—One matter to be argued on Demurrer is that the answer sets forth no sufficient reason in law for the cancellation by the Secretary of the Interior of the enrollment of petitioners duly and regularly ordered, the said Secretary being without authority of law to cancel a name duly and regularly placed on the final approved rolls of the Creek Nation.

*Order Sustaining Demurrer.*

Filed January 17, 1908.

In the Supreme Court of the District of Columbia.

Law. No. 49891.

THE UNITED STATES *ex Rel.* LUCY ANN TURNER ET AL., Petitioners.  
*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

On consideration of the petitioners' demurrer to the answer of the respondent, it is considered that said demurrer be and the same is hereby sustained this 17th day of January, 1908.

WRIGHT, *Justice.*

39      *Order Directing Mandamus to Issue, Appeal, &c.*

Filed January 17, 1908.

In the Supreme Court of the District of Columbia.

Law. No. 49891.

THE UNITED STATES OF AMERICA *ex Rel.* LUCY ANN TURNER ET AL.,  
Relators,

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

Come now here as well the Relators, as the Respondent, by their respective attorneys; whereupon the Relators' demurrer to the answer of the Respondent having been sustained on this 17th day of January A. D. 1908 the Respondent by his attorneys says he will stand upon his answer.

Thereupon, the Court being fully advised, it is considered, ordered and adjudged that the Respondent James Rudolph Garfield, be, and he is hereby commanded within twenty days after this date to restore the name of the Relators to the freedmen rolls of members or citizens of the Creek Tribe or Nation, to erase from said rolls the statements placed thereon derogatory to Relators' rights in said Creek Tribe and to recognize Relators as enrolled freedmen members of said tribe.

The Respondent thereupon in open Court by counsel excepted to the judgment so rendered and prayed an appeal from the judgment of this Court to the Court of Appeals of the District of Columbia, which was allowed, and pending such appeal the judgment is stayed and no writ shall issue thereon against the Respondent.

WRIGHT, *Justice*.

40

*Mandate.*

Filed May 25, 1908.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between The United States of America *ex Relazione* Lucy Ann Turner, Dixey Griswell and Maude Turner, Willie Turner, Anna Turner and Florence Turner, Minors, suing by their mother and next friend, Lucy Ann Turner, petitioners, and James Rudolph Garfield, Secretary of the Interior, respondent, Law No. 49891, wherein the judgment of the said Supreme Court entered in said cause on the 17th day of January, A. D. 1908, is in the following words, viz:

Come now here as well the Relators, as the Respondent, by their respective attorneys; whereupon the Relator's demurrer to the answer of the Respondent having been sustained on this 17th day of January A. D. 1908 the Respondent by his attorneys says he will stand upon his answer.

Thereupon, the Court being fully advised, it is considered, ordered and adjudged that the Respondent James Rudolph Garfield,  
41 be, and he is hereby commanded within twenty days after this date to restore the name of the Relators to the freedmen rolls of members or citizens of the Creek Tribe or Nation, to erase from said rolls the statements placed thereon derogatory to Relators' rights in said Creek Tribe and to recognize Relators as enrolled freedmen members of said tribe.

The Respondent thereupon in open Court by Counsel excepted to the judgment so rendered and prayed an appeal from the judgment of this Court to the Court of Appeals of the District of Columbia, which was allowed, and pending such appeal the judgment is stayed and no writ shall issue thereon against the Respondent.

WRIGHT, *Justice*.

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of April, in the year of our Lord one thousand nine hundred and eight, the said cause came on

to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, reversed with costs; and that  
42 the said respondent James Rudolph Garfield, Secretary of the Interior, recover against the said petitioners sixty-nine dollars and seventy cents for his costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court for further proceedings in accordance with the opinion of this Court.

May 5, 1908.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 23d day of May in the year of our Lord one thousand nine hundred and eight.

*Costs of Respondent.*

Clerk .....	\$10.40
Attorney .....	5.00
Printing Record.....	54.30
	<hr/>
	\$69.70

Still due Clerk.

HENRY W. HODGES,  
*Clerk of the Court of Appeals  
of the District of Columbia.*

43 *Order on Mandate of Court of Appeals, &c.*

Filed June 5, 1908.

In the Supreme Court of the District of Columbia.

Law. No. 49891.

THE UNITED STATES OF AMERICA *ex Rel.* LUCY ANN TURNER ET AL.,  
Petitioners,

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

The Court of Appeals having reversed the judgment of this Court entered on demurrer filed by petitioners to the answer of the respondent in the above-entitled cause with costs, with directions to

take further proceedings in conformity to the opinion of the Court of Appeals, as appears by the mandate of said Court of Appeals here presented by counsel for petitioners, it is by this Court ordered that judgment be entered herein against petitioners for costs adjudged in said Court of Appeals. Therefore, it is considered that the respondent recover against said defendant the sum of \$91.15 for his costs aforesaid and that execution issue therefor.

And it is further ordered that the order of this Court entered herein directing that the writ of mandamus issue against the respondent be, and the same hereby is, vacated and for nothing held, and that the demurrer filed herein by petitioners to the answer of  
44      respondent to their petition and the rule to show cause issued  
by the Court thereon be, and the same hereby is, overruled  
with leave to petitioners to plead over or to take such further  
steps as they may be advised. And thereupon the petitioners by  
their counsel in open Court say that they do not care to plead over,  
but will stand upon their demurrer as originally filed herein, where-  
upon it is by the Court this 5th day of June, A. D. 1908, ordered  
that the demurrer aforesaid be, and the same hereby is, overruled  
and that this cause be, and the same shall, stand dismissed and that  
final judgment for costs be entered against the petitioners. And  
thereupon the petitioners in open Court by their counsel noted an  
appeal to the Court of Appeals from the order of this Court dismiss-  
ing this their cause and directing that final judgment for costs be  
entered against them and prayed the Court to fix the bond for costs  
on appeal, which the Court accordingly did at and in the sum of one  
hundred dollars bond for costs on appeal, with leave to deposit fifty  
dollars in currency with the Clerk of the Court in lieu of bond for  
costs on appeal if so advised.

WRIGHT.

*Memorandum.*

June 22, 1908.—Appeal Bond approved and filed.

45      *Directions to Clerk for Preparation of Transcript of Record.*

Filed June 22, 1908.

In the Supreme Court of the District of Columbia, the 22d Day  
of June, 1908.

At Law. No. 49891.

THE UNITED STATES *ex Rel.* LUCY ANN TURNER ET AL.

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of the Interior.

The Clerk of said Court will please prepare a record on appeal in  
the above entitled cause, including the record on appeal heretofore

transmitted to the Court of Appeals in this cause & the proceedings herein subsequent to the decision of the Court of Appeals.

CHAS. H. MERILLAT,  
*Attorney for Petitioner.*

46 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 45, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49891 at Law, wherein The United States of America, *ex relatione* Lucy Ann Turner, &c. *et als.*, are Petitioners, and James Rudolph Garfield, Secretary of the Interior, is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 7th day of July A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1926. The United States of America *ex relatione* Lucy Ann Turner *et al.*, appellants, *vs.* James Rudolph Garfield, Secretary of the Interior. Court of Appeals, District of Columbia. Filed Jul- 22, 1908. Henry W. Hodges, clerk.



COURT OF APPEALS,  
DISTRICT OF COLUMBIA,  
FILED

MAR 2-1909

*Henry W. Hodges.*  
In the Court of Appeals of the District of Columbia.

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JANUARY TERM, 1909.

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THE UNITED STATES OF AMERICA *ex rel.*

LUCY ANN TURNER *et al.*,

*Appellants,*

*vs.*

JAMES RUDOLPH GARFIELD, Secretary of  
the Interior,

*Appellee.*

} No. 1926.

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### BRIEF FOR APPELLANTS.

Counsel for appellants, in view of the fact that the Goldsby case has been decided by the Supreme Court of the United States since the opinion rendered by this court in the instant case; desire briefly to file a new brief and make a brief argument in the Turner case. They do this on the ground that, taking the appellee's own contention with reference to the opinion of this court in the Turner case, the same has been reversed by the Supreme Court in the Goldsby case.

The facts in the Turner case briefly are that the Turners were duly enrolled as Creek citizens, but were not notified of their enrollment, and were stricken from the rolls before they had opportunity to select their allotments (Rec. pp. 7-9). After enrollment, their enrollment was canceled, on the ground that the Secretary of the Interior

believed their enrollment had been procured by fraud. The grounds on which he based his belief, as shown in the record, are that he took the depositions of certain persons who, in answering questions under oath, said that the Turners were not born of the ancestor through whom they claimed their enrollment rights (Rec. pp. 16-24). The only notice given the Turners that depositions would be taken was about two hours before, when their attorney's office was informed certain testimony would be taken. The attorney was sick in bed, and, learning what had been said, requested a postponement, which was refused. He then requested an opportunity later to cross-examine the witnesses for the Government, and the Creek Nation, and, the record states, understood the same would be granted him (Rec. p. 9). He also requested an opportunity to adduce witnesses in defense, and understood this would be granted him. The case was closed without affording opportunity for cross-examination or for witnesses to be adduced in defense of the case made (Rec. p. 24). The appellants were stricken from the rolls. The *ex parte* depositions are the basis on which the Secretary states that on information and belief the enrollment was procured by fraud. A demurrer to this was filed.

This court refused enrollment on the ground that the parties admitted by their demurrer the fraud. Appellants contend that they did not admit the fraud by their demurrer, but all they did admit was that at a certain *ex parte* gathering certain witnesses had made certain statements denying that the Turners were the children of the ancestor they claimed to derive their rights from (Rec. p. 25), and that on these *ex parte* and *ultra vires* depositions appellee believes the enrollment of appellants to be fraudulent. Appellants admit that the appellee was informed of these *ex parte* statements, and they admit that

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believed their enrollment had been procured by fraud. The grounds on which he based his belief, as shown in the record, are that he took the depositions of certain persons who, in answering questions under oath, said that the Turners were not born of the ancestor through whom they claimed their enrollment rights (Rec. pp. 16-24). The only notice given the Turners that depositions would be taken was about two hours before, when their attorney's office was informed certain testimony would be taken. The attorney was sick in bed, and, learning what had been said, requested a postponement, which was refused. He then requested an opportunity later to cross-examine the witnesses for the Government, and the Creek Nation, and, the record states, understood the same would be granted him (Rec. p. 9). He also requested an opportunity to adduce witnesses in defense, and understood this would be granted him. The case was closed without affording opportunity for cross-examination or for witnesses to be adduced in defense of the case made (Rec. p. 24). The appellants were stricken from the rolls. The *ex parte* depositions are the basis on which the Secretary states that on information and belief the enrollment was procured by fraud. A demurrer to this was filed.

This court refused enrollment on the ground that the parties admitted by their demurrer the fraud. Appellants contend that they did not admit the fraud by their demurrer, but all they did admit was that at a certain *ex parte* gathering certain witnesses had made certain statements denying that the Turners were the children of the ancestor they claimed to derive their rights from (Rec. p. 25), and that on these *ex parte* and *ultra vires* depositions appellee believes the enrollment of appellants to be fraudulent. Appellants admit that the appellee was informed of these *ex parte* statements, and they admit that

he believes them. They do not admit the statements made by the witnesses are true. The situation is not so strong as where one side admit a certain witness if called would testify thus and so, but do not admit the testimony to be true. The rule in mandamus is that the return or answer is to be most strictly construed against the respondent, and is to be construed with almost the same strictness as an indictment. (Ency. Pl. & Pr., Vol. 13, p. 718.)

Appellants contend that the case is not within *Redfield vs. Windom*, 137 U. S., 637, because there *facts* were alleged upon information and belief, while here certain *ultra vires*, but sworn statements, are alleged as the basis for an opinion on the part of appellee that appellants were guilty of fraud. Appellants in their petition squarely and specifically averred their enrollment had not been procured by fraud.

This court, in its opinion in the case at bar, said:

“Whatever authority or lack of authority there may have been for the Secretary of the Interior to act in the premises, he acted; and the enrollment was canceled. If, as contended by counsel, he had lost control of the rolls when the cancellation took place, he had no lawful authority to cancel the names from the rolls. For the same reason he would have no higher authority to reinstate the names.”

Counsel for appellants contend that the opinion of the court on this point has been reversed by the Supreme Court of the United States in what is known as the *Goldsby* case; that the Supreme Court has found and asserted the precise doctrine for which appellants contend, namely, that the powers of the court and its power and authority to direct the appellee to reinstate the names

of appellants begins exactly where the control or power of the appellee ends or is lost.

Appellants contend that after enrollment there is no authority of Congress or the Secretary of the Interior to cancel any enrollment, and that any act so attempted is unauthorized and void, wholly unwarranted and not within the authority and control of the Interior Department.

In the Goldsby case the Supreme Court of the United States said:

“If the Secretary has exceeded the authority conferred upon him by law, then there is power in the courts to restore the status of the parties aggrieved by such unwarranted action.”

In the Goldsby case the court found, we contend, that there was no authority given by Congress to cancel an enrollment, and that by enrollment a party became vested with rights—that is, “entitled to participate in the distribution of the funds of the nation.”

The Creek agreements also state the right to share in the lands to be immediate and consequential and vested upon enrollment.

In the Lowe case, just presented, counsel have gone exhaustively into the power and authority of the Secretary of the Interior over the approved rolls. It is deemed unnecessary to reiterate the argument.

Believing this court would desire this matter briefly presented to its attention, we herewith respectfully submit the foregoing.

KAPPLER & MERILLAT,  
JAMES K. JONES,  
*Attorneys for Appellants.*

